IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.531 OF 1989

State of Maharashtra .. Appellant

versus

M/s.Maharashtra Safety Glass Works Ltd. and ors. .. Respondent

...

Mr.A.M. Shringarpure, APP for the State.

Mr.Arfan Sait with Madhur Baya i/b N.N. Gavankar for the respondent.

CORAM : V.M. KANADE, J

DATED : 13th December 2004.

P.C:-

1. Heard the learned APP appearing on behalf of the State and the learned counsel appearing on behalf of the respondent.

2. The State is challenging the judgement and

order passed by the Chief Metropolitan Magistrate, First Class. By the said judgement and order, the learned Magistrate was pleased to acquit the accused and was charged for having committed an offence u/s.9(1) of the Central Excise and Tariff Act 1944 and section 471 of the IPC. The prosecution case is that the accused no.1 is a public Criminal Company and they were engaged in the manufacture and sale of toughened glasses which are excisable goods under the Central Excise and Tariff Act 1986. The prosecution case is that the accused had removed excisable goods without payment of excise and has committed the said offence.

3. The prosecution case in the trial Court was that the appellants have received information that the accused were removing excisable goods under the guise of removing non excisable goods and were thereby evading payment of excise duty. The prosecution case is that on receiving specific information that the accused were going to remove excisable under the guise of removing non excisable goods. They therefore, kept watch and when the trucks carrying the said goods came out of the compound, they were raided and apprehended and inventory of the said goods was taken, it was found that the accused were transporting excisable

goods though the documents in question shows that the goods are non excisable. A further search of the factory was taken and prosecution case was that the stock registers were not properly maintained. A complaint was therefore, lodged against the accused no.1 and other accused who were in charge of the company. The trial Court after appreciating the evidence adduced by the prosecution held that the prosecution had not proved beyond reasonable doubt that the accused had committed an offence u/s.9(1) of the Excise Act and 471 of the IPC.

4. Against the said judgement and order, the present appeal has been preferred by the Superintendent, Central Excise.

5. The learned APP has taken me through the judgement and order of the trial Court as also the evidence adduced by the prosecution.

6. There are several lacunae in the prosecution case and in my view, prosecution has not proved beyond reasonable doubt that the accused have committed the said offence. Though the complaint states that the complainant had received specific information and

therefore, they had raided the place. Both the PW no.1, complainant and Shri Nalawade PW no.2 have admitted in their evidence that they did not have specific information. They have stated in their evidence that they had kept a watch on several occasions on the factory premises and that they were not successful on earlier occasions. Further, the complainant in the cross-examination has admitted that he had not read the complaint when he had signed the complaint. He has further admitted that he did not know the particulars mentioned in the complaint. Thus, there was a clear non application of mind on the part of the complainant and he did not have any personal knowledge about the complaint which was filed at his behest. Thirdly, though it was stated in the evidence of the prosecution witnesses that a complete inventory of the glass items were taken. Infact, these witnesses have admitted that only few samples from each truck were taken. This practically demolishes the prosecution case as it is on the basis of samples which are taken, the prosecution has alleged evasion of excise duty. Further, it has come on record that the accused had infact properly maintained the stock registers and other documents. The entire prosecution case therefore that the bogus

documents were prepared in order to show that the glass in question was not en excisable product falls to the ground.

7. The trial Court further has considered elaborately the question regarding evasion of excise on the basis of the evidence on record and has given cogent reasons while coming to the conclusion that even otherwise the theory of evasion of tax was not proved. I do not see any reason to interfere in the well reasoned judgement and order passed by the trial court particularly after lapse of almost 16 years from the said judgement and order. Even otherwise, there is no merit in the present appeal.

8. Appeal is dismissed.

V.M. KANADE, J